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PROTECTION AND MANAGEMENT OF TRADE SECRETS IN MYANMAR

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ABSTRACT: A trade secret is a form of intellectual property that obtains its economic value from remaining undisclosed. The protection of trade secrets plays a crucial role in fostering empowerment, innovation, and creativity within various industries. Nonetheless, if such legal protection is not carefully balanced against competing interests such as the freedom of employee movement and the ability to build upon existing knowledge, it may hinder these fundamental rights. Therefore, it is essential to assess trade secret protection in light of broader social and economic considerations. Furthermore, effective intellectual property (IP) management requires recognizing and utilizing the overlap between different IP categories, particularly between patents and trade secrets, to maximise the benefits of innovation. Myanmar enacted the Competition Law in 2015, which includes provisions related to the protection of trade secrets and prescribes penalties for violations. However, many businesses and employees may lack awareness of the significance of trade secrets and their corresponding legal responsibilities. This research concludes by presenting practical recommendations for businesses to enhance internal strategies for managing trade secrets. These findings are intended to support Myanmar's broader objective of attracting foreign investment and fostering long-term economic development through the establishment of a more robust intellectual property protection framework.

Keywords: *Intellectual Property Management, Legal Protection, Trade Secret.*

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Introduction

Trade secret refers to a process or product owned by a business, the disclosure of which could result in harm to that business. Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), 1994 defines trade secrets as information that is not generally known, possesses commercial value due to its secrecy, and is subject to reasonable steps taken by its rightful holder to maintain its confidentiality. In a complementary manner, Article 10 of the Paris Convention for the Protection of Industrial Property, 1967 imposes a general obligation on Member States to ensure effective protection against acts of unfair competition, specifically those acts that are contrary to honest commercial or industrial practices.

This paper is structured as follows. The first section provides an overview of the fundamental concept of trade secrets and unfair competition. The second section examines the legal requirements for the protection of a trade secret. The third section analyses the legal frameworks governing acts that constitute infringement or misappropriation of trade secrets in each management. Finally, the paper considers the legal and practical approaches to defending against claims of trade secret misappropriation.

Research Method

This study employed a documentary legal analysis alongside a comprehensive literature review. Relevant data were collected not only from official reports issued by the Government of Myanmar, but also from the relevant legislation, state practices, and illustrative examples from both domestic and international contexts.

Research Questions

1. How effective is the legal framework in Myanmar in ensuring the protection and management of trade secret?
2. What improvements are necessary to align it with international standards and economic development goals?

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Trade Secret and Unfair Competition

Trade secrets constitute a critical category of confidential information that must not be disclosed to unauthorized parties in all sectors of business and commerce. The greater the success of a business, the more valuable its trade secrets tend to become, thereby increasing the necessity for stringent protection. The unauthorized disclosure of such secrets, especially to competitors, can cause significant harm to a business, including the loss of competitive independence and market advantage. Accordingly, enterprises engaged in the production of goods and services are highly motivated to safeguard any confidential information that contributes to their commercial success.

It is widely recognized that all businesses possess trade secrets, which constitute valuable confidential information capable of conferring a competitive advantage. Some enterprises are acutely aware of their strategic importance and, as a result, implement stringent internal measures to safeguard such information from any form of unauthorized disclosure that could potentially harm the company's commercial interests. However, many businesses fail to appreciate the significance of trade secrets until a threat emerges for instance, when competitors attempt to obtain sensitive materials such as client databases, research outcomes, or marketing strategies, or when they endeavour to recruit employees who hold crucial proprietary knowledge. It is often only at this stage that organizations realize the necessity of protecting such intangible assets.

Generally, any confidential business information that affords an enterprise a competitive advantage may be classified as a trade secret. The unauthorized acquisition, use, or disclosure of such information by individuals other than the rightful holder is typically deemed an unfair practice and constitutes a violation of trade secret protection. The legal safeguarding of trade secrets varies across jurisdictions; in some legal systems, it falls under the broader framework of unfair competition law, while in others, it is governed by specific statutory provisions or developed through judicial precedent concerning the protection of confidential information. Although the determination of whether particular information qualifies as a trade secret depends on the specific facts and context of each case, certain practices such as industrial or commercial espionage, breach of contract, and breach of confidence are universally recognized as clearly unfair and unlawful in relation to secret information.

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A trade secret is typically characterized by the investment of resources in its development and by the fact that it is not generally known or readily accessible within the relevant industry. Importantly, even negative information such as research paths that have been investigated and proven unproductive may qualify as a trade secret, as it reflects valuable knowledge derived from experience. The following are illustrative categories of information that may be considered trade secrets:

- Manufacturing process, techniques and know-how;
- Data, compilation, e.g., lists of customers;
- Design, drawings, blueprints, maps;
- Algorithms and processes implemented in computer programs, as well as the computer programs themselves;
- Formula used for producing products;
- Business strategies, business plans, export plans, and marketing plans;
- Financial information;
- Personnel records;
- Manuals;
- Ingredients; and
- Information related to research and development activities.

Trade secrets represent a vital form of confidential business information that provides a competitive advantage and must be protected from unauthorized disclosure. As businesses become more successful, the value of their trade secrets increases, necessitating robust legal and practical safeguards. Unauthorized use or exposure, particularly by competitors, can result in significant commercial harm, including the loss of market position and strategic independence.

In 2006, the Madras High Court in India delivered a significant ruling on the protection of trade secrets in the case of Tractors and Farm Equipment Ltd. V. Green Field Farm

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Equipment Pvt. Ltd. The dispute arose when a senior employee of the plaintiff company, who had been involved in the design of a truck known as the "Hunter Truck," left the organization and subsequently established his own truck manufacturing company. It was alleged that the former employee used confidential and proprietary information acquired during his previous employment to develop a competing truck design, which was launched under the name "Maharaja 3300."

The plaintiff initiated legal proceedings, naming the new company as the first defendant and the former employee as the second defendant, and sought an injunction to restrain the production and marketing of the allegedly infringing design. Upon examination, the Court found that the defendant had filed an application to register the disputed design under the name of his own company, despite the substantial similarities with the plaintiff's original design. Although the design had been given a different name, it was evident that the Maharaja 3300 was developed using confidential business information obtained during the defendant's prior tenure with the plaintiff.

The Court concluded that the actions of the defendant constituted a clear breach of trust and were carried out outside of good faith. Furthermore, it held that the defendant had violated principles of trade secret protection by misappropriating confidential design data for personal commercial gain. Consequently, the Madras High Court granted an injunction, prohibiting the defendants from continuing the production and sale of trucks based on the Maharaja 3300 design.

An important illustration is found in the Indian case of Tractors and Farm Equipment Ltd. v. Green Field Farm Equipment Pvt. Ltd. (2006), where the Madras High Court upheld the protection of trade secrets. The Court granted an injunction against a former employee who misused proprietary design information to produce a competing truck model, ruling it a breach of trust and a violation of trade secret law.

The disclosure of business secrets as an act constituting unfair competition. Furthermore, any person engaged in commercial activities from committing the following acts in relation to the disclosure of another's business secrets: bypassing security measures employed by the rightful owner of the business secrets to access or obtain confidential information; using or disclosing such confidential business information without the authorization of the

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lawful owner; employing deceit or exploiting the trust of individuals who are bound by confidentiality obligations to gain access to, collect, or disclose business secrets; divulging confidential business procedures and product distribution methods of other parties who have implemented such systems in accordance with the law; unlawfully disclosing economic information by breaching the security protocols established by state-owned entities; and engaging in commercial activities, applying for business licenses, or distributing goods by using the confidential information referred to in sub-section (e).

This provision aims to safeguard the integrity of business secrets and ensure fair competition by imposing legal consequences for unauthorized disclosure or misuse of such sensitive information. Any individual found to be in violation of the prohibitions set forth under Sections 19 shall, upon conviction, be subject to penal sanctions. The prescribed penalties include imprisonment for a term not exceeding two years, a monetary fine not exceeding one hundred lakh Kyats, or both. This provision reflects the legislature's intent to impose both criminal and financial consequences as a deterrent against non-compliance with key regulatory and commercial obligations stipulated under the law.

This law prohibits a range of unfair practices related to the disclosure of business secrets, including breaching security measures, misusing confidential information, and exploiting trust relationships. Legal provisions impose criminal liability for such acts, with penalties including imprisonment of up to two years, fines up to one hundred lakh Kyats, or both. These measures reflect a strong legislative commitment to deterring secret trade misappropriation and maintaining fair competition.

Trade Secret Protection

Unlike patents, trade secrets similar to copyright are protected without the need for formal registration. In other words, trade secret protection is not subject to procedural requirements or substantive examination by national administrative authorities. Consequently, once the relevant legal conditions for protection are satisfied under the applicable domestic laws, trade secrets may enjoy immediate and automatic protection in any given jurisdiction. This absence of formalities distinguishes trade secrets as a flexible and accessible form of intellectual property, particularly advantageous for businesses seeking to safeguard confidential commercial information across multiple legal systems.

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Trade secret protection does not confer exclusive proprietary rights over protected information in the same manner as patents or copyrights. Rather, it functions by regulating the conduct of individuals and entities, aiming to prevent acts that contravene the principles of honest commercial practices. In this context, the unauthorized acquisition, disclosure, or use of trade secret information through unlawful, improper, dishonest, or unfair means constitutes a misappropriation of trade secrets.

From a legal standpoint, trade secret holders whether natural or legal persons are entitled to prevent third parties from:

- disclosing the trade secret to others,
- acquiring the trade secret, or
- using the trade secret,

without the holder's consent and in a manner inconsistent with honest commercial practices. This framework serves to uphold fair competition and protect the integrity of confidential business information in the marketplace.

The protection of trade secret intellectual property (IP) rights obliges the rightful owners to undertake reasonable measures to maintain the confidentiality of the information. This requirement is generally not considered unduly burdensome. Common precautionary steps include the implementation of password protection for digital access, the use of physical security measures such as locked filing systems, and the restriction of information disclosure strictly to individuals with a legitimate need to know. Furthermore, it is standard practice to require employees and licensees to enter into non-disclosure agreements (NDAs). In jurisdictions where legal guarantee, employers may also incorporate non-compete clauses to further safeguard sensitive information. These measures collectively support the legal recognition and enforceability of trade secret protection.

While the improper, dishonest, or unlawful acquisition, use, or disclosure of trade secret information by unauthorized third parties is generally prohibited, several exceptions to this principle may apply. Moreover, secret trade protection is subject to certain limitations in specific legal relationships, particularly in the context of employment in order to balance the competing interests of employers and employees. These exceptions and limitations are

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not uniform and tend to differ across jurisdictions, reflecting variations in legal provisions and policy objectives.

In the United States, the legal framework governing trade secrets is primarily based on the Uniform Trade Secrets Act and the Economic Espionage Act, 1996. These statutes provide both civil and criminal remedies for the misappropriation of trade secrets. In contrast, within Commonwealth jurisdictions, trade secrets are generally regarded as equitable rights derived from principles of natural law, rather than as proprietary rights. Under common law, the unauthorized disclosure or misuse of confidential information is typically treated as a breach of confidence, involving elements of dishonesty or bad faith. Notably, however, in the Hong Kong Special Administrative Region a jurisdiction that also adheres to the common law tradition, judicial decisions have recognized trade secrets as constituting a form of property right. This divergence illustrates the nuanced and jurisdiction specific character of trade secret protection within common law systems.

Myanmar has enacted the Competition Law with the primary objective of fostering and safeguarding fair competition within economic activities. This legislation seeks to protect the public interest by preventing monopolistic conduct, market dominance, and price manipulation that could adversely affect the national economy. By promoting a competitive market environment, the law aims to create a level playing field for enterprises, enhance economic efficiency, and provide consumers with benefits such as reduced prices and greater product diversity.

In addition, the Myanmar Official Secrets Act serves as a legal instrument designed to protect national security through the prevention of unauthorized disclosure of sensitive or classified information. The Act addresses threats such as espionage and the dissemination of confidential government data, prohibiting acts including unauthorized surveillance for foreign entities, unlawful access to government systems, and the leaking of classified documents. The provisions of this legislation underscore the State’s commitment to maintaining the confidentiality of information critical to national sovereignty and security.

In order to ensure the effective protection of trade secrets, businesses must adopt a comprehensive and proactive approach. This includes implementing robust access control measures and maintaining a well-defined trade secret policy that is subject to regular

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review and improvement. Employees and agents should be adequately trained to understand their obligations regarding confidentiality and information security.

Legal safeguards play a pivotal role in reinforcing these protections. Enterprises should enter into formal confidentiality agreements and non-disclosure agreements (NDAs) with employees, contractors, and third parties. These agreements should be complemented by non-solicitation clauses and other contractual provisions that discourage the unauthorized use or disclosure of sensitive information. Furthermore, it is advisable to establish a clear confidential relationship through both written records and, where appropriate, oral agreements that reaffirm the duty to maintain secrecy.

In the event of potential breaches or uncertainty regarding the legal status of certain information, consulting legal counsel is essential. Such a holistic strategy not only deters misappropriation but also strengthens the legal standing of trade secret claims in the event of litigation.

Trade Secrete Management

A trade secret may be defined as any confidential information that derives independent economic value from not being generally known or readily accessible to competitors, and which is subject to reasonable measures taken by its rightful holder to maintain its secrecy. The scope of trade secrets is remarkably broad and can extend to various elements within a business, often emerging in unanticipated areas, thereby underscoring the necessity for systematic protection and awareness in commercial operations.

Trade secret management involves safeguarding confidential business information that provides competitive advantage and derives economic value from its secrecy. Such information must be protected through reasonable measures by its rightful holder. The scope of trade secrets is extensive and may cover unexpected areas within a business, highlighting the importance of systematic protection.

Protection of trade secret against misappropriation and leakages

A trade secret holder may choose not to protect certain information at all, or may opt for less stringent protective measures, particularly when the associated costs whether financial or operational, render such protection impractical. For instance, a company might

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determine that enabling broad and comprehensive access to an engineering database for all its engineers is more beneficial. This approach fosters collaboration and innovation within the team, even if it comes at the expense of tighter security controls that would restrict access only to data directly relevant to each engineer's current responsibilities.

A very influential case often associated with the "inevitable disclosure" doctrine in the US is PepsiCo, Inc. v. Redmond, 54 F.3d 1262 (7th Cir. 1995). In this case, a former PepsiCo employee (Redmond) with high-level knowledge of PepsiCo's strategic plans went to work for Quaker Oats, a direct competitor. The court found that even without direct evidence of misappropriation, Redmond would inevitably use PepsiCo's trade secrets in his new role and thus enjoined him from working on certain competing products.

One of the primary risks associated with trade secrets is the possibility of unintentional loss due to negligence or mismanagement by individuals who have access to confidential information, such as employees or third-party collaborators. Accidental disclosures and leaks may occur as a result of the practical challenges involved in safeguarding trade secrets. For instance, when effective utilization of the information necessitates access by a large number of individuals, the likelihood of inadvertent disclosure increases. Additional risks may arise from the nature of the medium on which the trade secret is recorded. Empirical studies indicate that the most common cause of secrecy breaches is the mishandling of information by employees, underscoring the critical importance of effective communication and proper training within the workforce.

To guard against misappropriation and unintentional leaks, trade secret holders must balance security with practical accessibility. Overly restrictive internal controls can hinder efficiency and reduce the value of information. For example, while limiting access to sensitive data may enhance protection, it may also obstruct workflow and innovation. Therefore, engaging employees in evaluating feasible protection methods is vital for operational sustainability.

The legal framework also addresses misuse risks, as seen in PepsiCo v. Redmond, where the court applied the "inevitable disclosure" doctrine to prevent trade secret leakage through future employment. A major source of risk remains the accidental or intentional actions of employees, making training and internal safeguards essential.

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Industrial Espionage

In the context of modern commercial competition, industrial espionage has become an increasingly prevalent concern among rival businesses. The act of acquiring confidential business information through unauthorized or improper means constitutes a criminal offense under most legal systems. Given the heightened intensity of global trade and economic rivalry, employers are particularly vigilant about potential internal threats to the security of trade secrets. Concerns commonly arise regarding whether employees may be disclosing proprietary information to competitors, either intentionally or unintentionally. Employers may also question whether external parties are actively soliciting confidential data from their workforce. Furthermore, the risk of inadvertent disclosure by employees underscores the vulnerability of trade secrets in everyday business operations. In certain cases, individuals may engage in fraudulent behaviour by misappropriating confidential knowledge during their employment, only to later establish competing enterprises using that information. It reflects the critical importance of robust legal frameworks and internal safeguards to prevent the unauthorized exploitation of trade secrets.

Industrial espionage remains a growing concern in competitive markets. The unauthorized acquisition or disclosure of confidential information is considered a criminal offence. Employers must remain vigilant against both internal and external threats, including the misuse of proprietary knowledge by former employees or collaborators.

Employment Contract

In the formation of an employment contract between an employer and an employee, it is standard practice to incorporate provisions regarding the obligation to safeguard business secrets and to refrain from disclosing such information to unauthorized parties. Employees, including workers, specialists, and consultants, who obtain access to sensitive or proprietary business information in the course of their employment, are typically bound by contractual confidentiality obligations. Information classified as confidential, particularly that which may benefit competitors must not be disclosed. Breaches of such obligations may result not only in dismissal but also in potential legal prosecution.

Employment contracts frequently contain an explicitly worded Confidentiality or Fidelity Clause, which stipulates that any unauthorized disclosure of confidential information may

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trigger both disciplinary and legal consequences. In many workplaces, these confidentiality obligations are further reinforced through internal announcements or codes of conduct. However, where an employment contract fails to expressly articulate such confidentiality provisions, the legal enforceability and binding strength of the obligation may be significantly weakened compared to contracts with clearly defined confidentiality terms.

Employment contracts commonly include confidentiality clauses that bind employees to protect sensitive information. Violations may result in both dismissal and prosecution. While post-employment mobility is legally protected under freedom of trade, misuse of trade secrets by former employees or their new employers may constitute unfair competition and attract legal liability.

Duration of Confidentiality Obligations

A distinctive feature of trade secret protection lies in the enduring nature of the obligation to maintain confidentiality. This duty is not limited to the period of active employment; rather, it extends beyond the termination of employment—whether by resignation, dismissal, or any other means and continues indefinitely. This distinguishes trade secrets from other forms of intellectual property, such as trademarks, patents, and copyrights, each of which is subject to specific terms of legal protection under relevant laws.

Nevertheless, legal distinctions exist between confidentiality obligations applicable solely during the term of employment and that enforceable post-employment. Importantly, former employees retain the right to utilize the general experience, skills, and knowledge acquired during their prior employment in subsequent professional endeavours, including accepting new roles or establishing independent enterprises. This right is protected under the principle of freedom of trade and competition. In this regard, Section 27 of the Contract Act (which has influence in many common law jurisdictions, including Myanmar) stipulates that any agreement imposing a restriction on lawful trade or profession is void, thereby affirming the employee's right to pursue alternative employment or business ventures.

However, where a former employee exploits confidential business information obtained during prior employment to establish a competing enterprise or where a new employer knowingly benefits from such information, these actions may constitute unfair competition.

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Such conduct not only undermines commercial ethics but may also result in legal liability for both the former employee and the new employer. Therefore, while post-employment mobility is legally permissible, it must not come at the expense of violating confidentiality obligations owed to the previous employer.

The implementation of secret trade protection measures whether individually or in combination can sometimes impede the efficient and seamless flow of information within an organization. For instance, requiring multiple levels of authorization each time access to trade secret information is needed may unnecessarily hinder operational efficiency and reduce the practical utility of the protected information. Excessive internal restrictions can, in effect, diminish the strategic value of trade secrets by limiting their integration into day-to-day business activities.

Accordingly, it is essential to strike an appropriate balance between ensuring the security of trade secrets and facilitating their effective use through internal information-sharing processes. To achieve this equilibrium, organizations may benefit from conducting interviews or consultations with employees directly involved in relevant workflows. Such engagement can help identify alternative security measures that are both practically feasible and compatible with maintaining workplace efficiency. In doing so, businesses can design and implement protective mechanisms that are legally sound yet operationally sustainable.

Finally, organizations must design trade secret protection mechanisms that ensure legal compliance without compromising efficiency. This requires a thoughtful balance between maintaining confidentiality and allowing productive internal information flow.

Conclusion

The protection and management of trade secrets is a vital component of modern business practice, particularly within the framework of Myanmar's evolving legal landscape. The enactment of the Competition Law demonstrates the State's commitment to fostering fair competition, preventing monopolistic behaviour, and safeguarding public welfare through enhanced market efficiency. Likewise, the Myanmar Official Secrets Act serves a complementary function by ensuring national security through the legal prohibition of unauthorized disclosure of classified information.

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For businesses, the effective protection of trade secrets requires a multifaceted and proactive approach. This includes the implementation of comprehensive internal measures such as access controls, regularly updated confidentiality policies, and rigorous employee training on information security obligations. Moreover, legal safeguards including confidentiality agreements, non-disclosure agreements (NDAs), and non-solicitation clauses serve to reinforce these protections, establishing clear contractual boundaries regarding the handling of sensitive information.

A critical balance must be maintained between protecting trade secrets and ensuring operational efficiency. Excessively rigid security protocols may inhibit innovation and collaboration, whereas insufficient controls may increase the risk of misappropriation or accidental disclosure. It is therefore essential for organizations to evaluate the practical effectiveness of their protective measures, involving employees in this process to ensure realistic and sustainable implementation.

Furthermore, industrial espionage remains a serious legal and ethical threat. Both internal misconduct and external exploitation of confidential business knowledge constitute criminal offences under various jurisdictions. As such, employers must remain vigilant and enforce strict policies to mitigate these risks. While freedom of trade allows former employees to utilize their skills and experience in future roles, any exploitation of trade secrets in doing so may result in legal liability under the doctrine of unfair competition.

Ultimately, the successful management of trade secrets depends not only on technical and administrative controls, but also on a strong legal foundation supported by both national legislation and well-drafted contractual instruments. In cases of uncertainty or potential breach, seeking legal counsel is advisable to ensure the enforceability of trade secret claims and to protect the long-term interests of the enterprise.

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